

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA
AT OMAHA, NEBRASKA

RODNEY R. URY,)	Case No.: _____
)	
Plaintiff,)	
)	COMPLAINT AND REQUEST FOR
vs.)	JURY TRIAL
)	
UNION PACIFIC RAILROAD COMPANY, a)	
Delaware corporation,)	
)	
Defendant.)	

COMES NOW Plaintiff, Rodney R. Ury, by and through his attorney, James L. Cox, Jr., of ROSSI COX VUCINOVICH FLASKAMP PC, and by way of claim against Defendant, alleges, avers and states:

FIRST CLAIM FOR RELIEF
(FELA)

1. At all times herein mentioned, Defendant, Union Pacific Railroad Company, a corporation, was and is now a duly-organized and existing corporation doing business in the State of Nebraska and other states, with its principal place of business in Omaha, Nebraska.

2. Defendant was at all times herein mentioned and now is engaged in the business of a common carrier by railroad in interstate commerce in Nebraska and other states.

3. At all times herein mentioned, part of Plaintiff's duties as an employee of Defendant were in the furtherance of and directly or closely or substantially affected said interstate commerce.

4. The injuries sustained by Plaintiff hereinafter enumerated arose in the course of Plaintiff's employment with Defendant.

5. Plaintiff brings this action against Defendant under the provisions of 45 U.S.C.,

§§ 51 to 60, *et. seq.* (“Federal Employers’ Liability Act”), regulations promulgated under the authority of those sections, other federal safety laws, and applicable state safety laws.

6. Under the terms of the Federal Employers’ Liability Act this court has jurisdiction.

7. On May 11, 2007, Plaintiff was employed by Defendant, Union Pacific Railroad Company, as a conductor on an eastbound loaded coal train (Train Symbol: CNARV-10) consisting of 137 load, zero empties. Plaintiff was riding in the lead locomotive, UP6567.

8. Near Gibbon, Nebraska, Milepost 179.80, while Plaintiff’s train was traveling approximately 40 miles per hour, Plaintiff and his engineer observed a defect in the track consisting of a variation in the rails of the track from its straight, or tangent, position a short distance ahead of the train.

9. This defect resulted in CNARV-10, the train Plaintiff was on, derailing cars into a westbound train, CWLJR9-7, which was passing CNARV-10 on Number 1 mainline track, derailing cars into both trains.

10. The first portion of Plaintiff’s train made it through the defect in the track, but when the trailing portion of Plaintiff’s train derailed into the westbound train on the adjacent track, the lead portion of the train, including the locomotive in which Plaintiff was riding, stopped suddenly, causing Plaintiff to be thrown into the dash in front of his seat and struck by his grip stored in the rack provided, causing the injuries hereinafter enumerated.

11. After Defendant’s investigation of the derailment, the defect in the track was reported by Defendant to be a “track alignment issue caused by a subgrade failure.”

12. As a result of the derailment, Plaintiff suffered injuries including, but not limited to, his neck and back, and psychological injuries.

13. On May 11, 2007, and before, Defendant, Union Pacific Railroad, had the duty, among others, to exercise ordinary care to provide its employees with a reasonably safe place to work, in, among other things:

- (a) the duty to investigate, institute, and implement reasonably safe methods and procedures for the installation, inspection, maintenance, and repair of its mainline track;
- (b) the duty to comply with its own rules, including Engineering Track Maintenance Field Manual and Union Pacific Railroad Engineering Standards in the installation, inspection, maintenance, and repair of its mainline track; and
- (c) the duty to comply with the Federal regulations, including the Track Safety Standards, 45 C.F.R. Chapter II (10-1-06 Edition) FRA, DOT Part 213, a violation of which results in absolute liability on Defendant, Union Pacific Railroad Company.

14. Defendant, through its agents, servants and employees other than Plaintiff, negligently failed to perform the above-said duties, as a result of which Plaintiff was caused to suffer the injuries hereinabove enumerated.

15. Plaintiff's injuries hereinabove enumerated have been painful and disabling, and for an indefinite time in the future will be painful and disabling, and have and will in the future cause Plaintiff mental and physical pain and suffering.

16. Plaintiff's injuries hereinabove enumerated have impaired Plaintiff's ability to enjoy life, and will impair in the future Plaintiff's ability to enjoy life.

17. By reason of the facts hereinabove stated and the injuries caused Plaintiff,

Plaintiff was forced to and did incur indebtedness for the services of duly-licensed physicians and surgeons, and for medicines, x-rays, and hospitalization. Plaintiff is informed and believes and therefore alleges that he will require further medical attention as a result of said injuries.

18. By reason of the facts hereinabove stated and the injuries caused Plaintiff, Plaintiff will incur a further indebtedness for medical attention.

19. By reason of the facts hereinbefore stated and the injuries caused Plaintiff thereby, Plaintiff has sustained loss of wages and loss of fringe benefits in the past, and will in the future sustain loss of wages, impairment of earning capacity, and loss of fringe benefits, all to his damage.

WHEREFORE, Plaintiff prays judgment against Defendant in an amount sufficient to compensate him for his general damages, together with such special damages as may hereinafter be ascertained, and for his costs of suit incurred herein, expert witness fees, and whatever other relief this honorable Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL TO A JURY OF SIX (6) ON ALL ISSUES RAISED HEREIN.

Signed at Denver, Colorado this 25th day of March, 2010.

s/James L. Cox, Jr.
James L. Cox, Jr., #20223
Attorney for Plaintiff
ROSSI COX VUCINOVICH FLASKAMP PC
3801 E. Florida Ave., Suite 905
Denver, CO 80210-2500
Telephone: (303) 759-3500
Fax: (303) 759-3180
jcox@rcvpc.com

Plaintiff's Address:

5265 N. Wagon Trail Rd.
North Platte, NE 69101